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09/000,924 12/30/97 HASEBE

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EXAMINER

TM02/0717

STAAS & HALSEY
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SUITE 500
WASHINGTON DC 20001

NGUYEN C
ART UNIT PAPER NUMBER

2165

DATE MAILED:

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Please find below and/or attached an Office communication concerning this application or proceeding.

Commissioner of Patents and Trademarks

Office Action Summary

Application No.
09/000,924

Applicant(s)

Hasebe et al.

Examiner
Cuong H. Nguyen

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM

THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136 (a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1) Responsive to communication(s) filed on Apr 26, 2001

2b) This action is non-final.

2a) This action is FINAL.

3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11; 453 O.G. 213.

Disposition of Claims

4) Claim(s) 1-23 is/are pending in the application.

4a) Of the above, claim(s) _____ is/are withdrawn from consideration.

5) Claim(s) _____ is/are allowed.

6) Claim(s) 1-23 is/are rejected.

7) Claim(s) _____ is/are objected to.

8) Claims _____ are subject to restriction and/or election requirement.

Application Papers

9) The specification is objected to by the Examiner.

10) The drawing(s) filed on _____ is/are objected to by the Examiner.

11) The proposed drawing correction filed on _____ is: a) approved b) disapproved.

12) The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. § 119

13) Acknowledgement is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d).

a) All b) Some* c) None of:

1. Certified copies of the priority documents have been received.
2. Certified copies of the priority documents have been received in Application No. _____.
3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

*See the attached detailed Office action for a list of the certified copies not received.

14) Acknowledgement is made of a claim for domestic priority under 35 U.S.C. § 119(e).

Attachment(s)

15) Notice of References Cited (PTO-892)

18) Interview Summary (PTO-413) Paper No(s). _____

16) Notice of Draftsperson's Patent Drawing Review (PTO-948)

19) Notice of Informal Patent Application (PTO-152)

17) Information Disclosure Statement(s) (PTO-1449) Paper No(s). _____

20) Other: _____

DETAILED ACTION

1. This Office Action is the communication received on 4/26/2001 (Response to restriction requirement and amendment).
2. Claims 1-23 are pending in this application. Claims 1-3, 4-8, 9-11, 12-14, 15-17, 18, 20, 22, and 23 are elected.
3. The following rejections are based on the examiner's broadest reasonable interpretation of the claims; *In re Pearson*, 181 USPQ 641 (CCPA 1974).

Response

4. In re **Hiniker Co.**, 47 USPQ2d 1523, 1529 (Fed. Cir. 1998)), the court rules: "**The name of the game is the claim.**"
5. The examiner submits that the reasons for rejection are obvious (v.s. cited prior arts) with **claims' language**. In re **Mraz**, 59 CCPA, F.2d, 173 USPQ 25, 28 (1972), the court ruled: "**Claims which are broad enough** to read on obvious subject matter are unpatentable even though they also read on nonobvious subject matter". Since submitted **independent claims are too broad**, they fall into a failure of lacking supporting for features they claim (i.e., claim 20 **need a specific computer program** to perform claimed tasks: applying processing to the input data, input data is linked to data from the processing, comparing the generated data with the input data, and storing differential data). There

is no further elaboration for claimed functions in claims (a **concrete supporting structure** such as computer instructions are required).

6. "Although operational characteristics of an apparatus may be apparent from the specification, we will not read such characteristics into the claims when they cannot be fairly connected to the structure recited in the claims". See **In re Self**, 671 F.2d 1344, 1348, 213 USPQ 1, 5 (CCPA 1982). When given their broadest reasonable interpretation, the claims on examination sweep in the prior art, and the prior art would have directed an artisan of ordinary skill to make the combination cited by the examiner. Hasebe et al. disclose a structure that meets the claim limitations. See **Giles Sutherland Rich**, Extend of Protection and Interpretation of Claims -- American Perspectives, 21 Int'l Rev. Indus. Prop. & Copyright L. 497, 499 (1990) ("The US is strictly an examination country and the main purpose of the examination, to which every application is subjected, is to try to make sure that what each claim defines is patentable. To coin a phrase, the name of the game is the claim.")

7. The examiner submits that the reasons for submitted rejection are obvious (v.s. cited prior arts) with claim language

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(on 35 U.S.C. 103 rejections). Applicants are suggested to indicate in the claims **how** the claims distinguish from the combining of cited prior arts.

8. Applicants' arguments do not comply with 37 CFR 1.111© because they do not clearly point out the patentable novelty which they think the claims present in view of the state of the art disclosed by the cited references. Further, they do not show how the amendments avoid such references or objections. (E.g. the previously cited **US Pat. 5,761,651**, Hasebe et al. disclose in 12:61-64: "*14. The software charging system according to claim 12, wherein utilization prices subtracted from the credit at each utilization are ciphered together with said utilization key by said secret keys and added to the software program.*" , and "*However, as this kind of software is still very expensive, more often than not the end users hesitate to buy such software until they can make sure that it really is what they want or that it can be used for the hardware they own. Against such a background, new software distributing systems have started to be provided, wherein a number of software with functional limits attached are sold inexpensively stored in CD-ROM. When the end users select the ones they want from such software and send fees, codes for releasing the functional limits will be reported to them."* (See

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'651 1:36-45), and in '651 12:38-57 "12. A software charging system comprising:

an authorization center setting a utilization amount; a utilization permitting device including a utilization amount managing part calculating a balance of the utilization amount set by the authorization center, and a utilization permission processing part permitting utilization of protected software in accordance with the balance calculated by the utilization amount managing part, wherein, said utilization permitting device includes utilization key data storing means for storing utilization key data necessary to permit software program utilization, said utilization amount managing part includes credit balance storing means shared by a plurality of software programs, and a plurality of groups of secret key storing means for storing secret keys, and said utilization key is ciphered by said secret keys and added to said software program.", and in the cited US Pat. 5,832,083 Iwayama et al. disclose: "Giving consideration to the reasons (1) to (3) mentioned above, the manufacturers have been selling CD-ROMs storing a plurality of pieces of software with functional limits attached. By actually using the software with functional limits attached, the end users in turn are allowed to identify if it is really what they desire. When they find that the used software is the one they require, the end users will pay normal fees. The

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manufacturers will report to the end users codes for releasing the functional limits of the software. Then, the end users will release the limits by using the codes given by the manufacturers. In this way, the end users will be allowed to utilize all the functions of the software" (see '083 1:45-56), and "The key generating section 1b generates a key decoding key using information converting section identification information for identifying the information converting section 1 attached to each reproducing device. This key generating section 1b includes a key registering section 10 for storing specified key information and a converting section 11 for converting information converting section identification information by key information stored in this key registering section 10 and generating a key decoding key." (See '083 8:41-54). In these disclosures, the function of appending/adding/attaching information/data and permission are obviously suggested.

9. In re **Nomiya**, 184 USPQ 607 (CCPA 1975), the court ruled: "However, there is no requirement that a motivation to make the modification be expressly articulated. The test for combining references is what the combination of disclosures taken as a whole would suggest to one of ordinary skill in the art. In re **Simon**, 174 USPQ 114 (CCPA 1972); In re **McLaughlin**, 170 USPQ 209 (CCPA 1971)".

10. In re **Prater**, 162 USPQ 541 (CCPA 1969), the court ruled: During patent examination, the pending claims must be given the broadest reasonable interpretation consistent with the

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specification. Reading a claim in light of the specification, to thereby interpret limitations explicitly recited in the claim, is quite different from reading limitations of the specification into a claim, to thereby narrow the scope of the claim by implicitly adding disclosed limitations which have no express basis in the claim.

11. *Ex parte Pfeiffer*, 135 USPQ 31 (BdPatApp&Int 1961) , the court ruled: "As to the rejection of the claims on the prior art references, we do not agree with the appellant that such structural limitations as are not disclosed by the references should be given patentable weight. This argument is applicable to claims drawn to structure and not claims drawn to a method. To be entitled to such weight in method claims, the recited structural limitations therein must affect the method in a manipulative sense and not to amount to the mere claiming of a use of a particular structure, which, in our opinion, is the case here." (i.e., claims 19, 21).

12. Note About Treatment of Combined References:

A. *In re Keller, Terry, and Davies*, 208 USPQ 871 (CCPA 1981) , the court rules: "One cannot show non-obviousness by attacking references individually where rejections are based on combinations of references."

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B. *In re Merck & Co., Inc.*, 231 USPQ 375 (CA FC 1986), the court rules: "Non-obviousness cannot be established by attacking references individually where the rejection is based upon the teachings of a combination of references."

C. *In re Nievelt*, 179 USPQ 224 (CCPA 1973), the court rules: "Combining teachings of references does not involve an ability to combine their specific structures."

D. *In re Bozek*, 163 USPQ 545 (CCPA 1969), the court rules: "Test for obviousness is not whether features of one reference may be bodily incorporated into the other to produce claimed subject matter but simply what the combination of references makes obvious to one of ordinary skill in pertinent art."

F. "Test of obviousness is not whether features of secondary reference may be bodily incorporated into primary reference's structure, nor whether claimed invention is expressly suggested in any one or all of references; rather, test is what combined teachings of references would have suggested to those of ordinary skill in art."

13. Means Plus Function, 6th Para.

Means plus functions languages are used in claims 1-5, 7-13, 15-16, .etc., supporting functions (essentially concrete computer programs) are required for these languages.

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14. The test for combining references is not what the individual references themselves suggest but rather what the combination of the disclosures taken as a whole would suggest to one of ordinary skill in the art. *In re Kuderna*, 165 USPQ 575 (CCPA 1970).

15. *Ex parte Rubin*, 5 USPQ2d 1461 (BdPatApp&Int 1987)

Knowledge in the art may have advanced such that results considered incredible are no longer *per se* incredible.

Claim Rejections - 35 USC § 112

The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall **contain a written description** of the invention, and of the manner and process of making and using it, in such **full, clear, concise, and exact terms** as to enable any person skilled in the art to which it pertains, **to make and use** the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

16. Claims 1-3, 4-8, 9-11, 12-14, 15-17, 18, 20, 22, and 23 contain subject matters which were not described in the specification in such a way as to enable one skilled in the art, to make and use the invention. The above claims are directed to computer program instructions/codes as essential elements for claimed limitations, but said computer program codes are not disclosed.

Claim Rejections - 35 USC § 103

17. Claims 1-5, 9, 12, 15, 18, 20, 22-23 are rejected under 35 U.S.C. § 103 as being unpatentable over Hasebe et al. (US Pat.

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5,392,351), in view of Hasebe et al. (US Pat. 5,761,651), further in view of Iwayama et al. (US Pat. 5,832,083).

A. Referring to claim 22: The claim is directed to a data protection system, comprising:

- means for storing data (this limitation is in claims 4, 9, 15, and they are very obvious with cited prior arts; see at least Hasebe et al. '351 claim 8);

- storage means for storing data (this limitation is in claims 1, 4, 9; see at least Hasebe et al. '651 Figs. 1, 5 ref.303);

- working/preparing means with input data (this limitation is in claims 1, 4, 9, 12, 15, it comprises a different/broad term for actions comprising: preparing, generating, appending, displaying data .etc., and they are very obvious with cited prior arts, see at least Hasebe et al. '351 3:47-56);

- means for generating information relating to input data (which is to be utilized in prepared data) (e.g. judging means, this limitation is in claims 1, 9, 12; see at least Hasebe et al. '651 6:8-17, 50-65; see also Iwayama et al. '083 Fig.10 (refs. 1009, 1010), Fig.16 (refs. 1607, 1608), & Figs. 18-19);

- comparing/judging means if using input data (this limitation is in claims 1, 4, 9 - see Hasebe et al. '651 6:8-17,

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50-65, Figs. 8-9; see also Iwayama et al. '083 Figs. 4 (ref. 2), 7, 8 (ref. 2a), 13-14, 16);

- means for updating/appending/adding generated information to prepared data (this limitation is in claims 1, 12) (see at least Hasebe et al. '651 claim 12 for obviousness);

- means for displaying (prepared)/input data (this limitation is in claims 1, 12); (see at least Hasebe et al. '083 Figs. 4 (ref. 5), 5; Fig. 20 (refs. 2014, 2016); see also Hasebe et al. '651 Fig. 2 for obviousness); and

Hasebe et al. do not expressly disclose about means for forbidding saving input data.

However, the examiner submits that this limitation is well-known in the art; e.g. a decision-making query/instruction for a similar task ("not saving data if ...): because it is simply an optional query/instruction that it would be recognized as useful to put in a computerized system. The examiner submits that although this claim is written with a different structure from original claim 1, one of ordinary skills in the art at the time of the invention would have found claim's limitations very obvious with inherent steps as suggested by cited prior art; prior art's limitations are not necessary spelled-out exactly claimed languages (see previous Office Action). Cited prior arts are not limited to the described embodiments in these inventions.

It is reasonable that various modifications and variations of the described method and system of the cited prior art would be apparent to those skilled in the art without departing from the scope and spirit of the invention. Although these inventions have been described in connection with specific preferred embodiments, it should be understood that those invention as claimed should not be unduly limited to such specific embodiments.

Therefore, it would have been obvious to one of ordinary skill in the art at the time of invention to suggest a system for combining the teaching references to apply above limitation in the disclosure of Hasebe et al., because this would increase extra flexible options for a data protection system.

B. Referring to claims 4, 9, 12, 15, 18, 20: The limitations of these claims recite similar claims' limitations (or fewer limitations presented) as claim 1 discussed above. The same analysis and reasoning set forth above in the rejection of claim 1 applied to these claims also because they cover a similar method/system/ device that doing same steps with similar means.

C. Referring to claim 2: Claim 2 is directed to a data protection system, further comprising:

means for executing cut & paste; and
means for forbidding cut & paste (data) .

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The rationales for rejection of claim 1 are incorporated.

The examiner submits that these 2 limitations are very obvious & well-known because they would present a well-known feature (as options) to one with skills in the art.

D. Per claims 3, 5:

The rationales for rejection of claim 1 are incorporated.

D1. Referring to claim 3: This claim is directed to a data protection system with means for judging (input) data is encrypted data; and means for determining allowed/permited data (see also Hasebe et al. '651 3:46-54 for obviousness).

The examiner submits that limitations for this claim are already discussed in claim 1 above. The rationales for rejection are similar.

D2. Referring to claim 5: The limitations of this claim recite the same claim's limitations (or fewer limitations presented) as claim 3 discussed above. The same analysis and reasoning set forth above in the rejection of claim 3 applied to thesees claims also because it covers similar limitations as the above system.

E. Referring to claim 6: This claim is dependent of claim 4, a limitation is a difference between original data to be worked and the data after. The rationales for rejection of claim 4 are incorporated. This limitation is obvious since it is an option to

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distinguish between old and new data with comparison means; see also Hasebe et al. '651 5:32-35 for obviousness).

F. Referring to claim 7: It is directed to a data protection system, comprising:

means for displaying (original) data, and updated data.

The rationales for rejection of this claim is similar as in claim 1.

18. Claims 10-11 are directed to a data protection system, comprising limitations that rationales for rejection of claims 1/9 are incorporated:

A. Re. Claim 10: A limitation is means for distributing data. Hasebe et al. obviously suggest this limitation (e.g. see Hasebe et al. '083 Figs. 14, 19 (ref. 1910), and 20 (ref. 2014)).

B. Re. Claim 11: A limitation is means for distributing (update) data; Hasebe et al. obviously suggest this limitation (see at least Hasebe et al. '083 Fig. 21).

C. Referring to claim 8: The limitation in this claim is quite obvious with one of skills in the art to add an option as storage means includes means for adding information; Hasebe et al. obviously suggest this limitation. (The rationales for rejection of claims 1 are incorporated; then see at least Hasebe et al. '651 claim 12).

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19. Referring to claims 13, 16:

A. Per claim 13: The limitations in these claim are quite obvious with one of skills in the art:

judging (yes or no) (there is a license for utilizing data. (same claim's limitation as #1.f, and #9) ; and means for permitting/allowing input data to be displayed. (same claim's limitation as in claim #1).

The same rationales for rejection of claims 1 are used herein.

B. Referring to claim 16:

The limitations of this claim recite the same claim limitations as claim 13 above. The same analysis and reasoning set forth in the rejection of claim 13 applied to this claim also because it covers a device that having similar means.

20. Referring to claim 14: The limitation in this claim (#14) is obvious and well-known with one of skills in the art: The data preparation device/protection system wherein the balance of the charge is used as the license (because it is still less than a maximum balance available; with rationales for rejections of claims 1 are incorporated).

21. Referring to claim 17: The limitation of this claim recite the same claim's limitation as claim 14 discussed above. The same analysis and reasoning set forth above in the rejection of

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claim 14 applied to this claim also because it covers a device that including similar means.

Conclusion

22. Claims 1-3, 4-8, 9-11, 12-14, 15-17, 18, 20, 22, and **23** are rejected.

23. Remarks: Although the language for "input data" and "data", "embedding data" have been defined, they still are not distinguishable vs. prior art for claims 1-2's languages (you can't perform any operation on "embedded" data (e.g. cut & paste functions within an embedded data), it must be operated as "a whole"; therefore, the examiner assumed a broader interpretation of these terms in examination (i.e. input data). Examiner submits that **amended claims do not clarify this difference.**

24. About argument of non-obviousness based on the Number of References: *In re Gorman*, 18 USPQ2d 1885 (CA FC), the court ruled: "Patent and Trademark Office's reliance on teachings of large number of references in rejecting patent application for obviousness does not, without more, weigh against holding of obviousness on appeal, since criterion is not number of references, but whether references are in fields which are same as or analogous to field of invention, and whether their teachings would, taken as whole, have made invention obvious to person skilled in that field."

25. In response to applicants' argument that the references fail to show certain features of applicants' invention, it is noted that the features upon which applicants relies are not distinguishable, still, because the reasons that cited prior art "do not disclose preventing during utilization of input data that require authorization for use certain utilization/processing of the input data (e.g. storage, cut and paste) unless authorization is obtained", the examiner submits that this feature is inherently suggested in cited prior art.

26. About carrying forward another's invention--Design choice to make integral (e.g. "Embedded data" in claims 1, 22):

A. In re Larson, 144 USPQ 347 (CCPA 1965) the court said:

"While the brake disc and clamp of Tuttle et al. comprise several parts, they are rigidly secured together as a single unit. The constituent parts are so combined as to constitute a unitary whole. Webster's New International Dictionary (2nd edition) defines "integral" as "(2) composed of constituent parts making a whole; composite; integrated." We are inclined to agree with the board's construction of the term "integral" as used in claim 12. Then, too, we are inclined to agree with the position of the solicitor that the use of a one piece construction instead of the structure disclosed in Tuttle et al. would be merely a matter of

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obvious engineering choice. In re Fridolph, 50 CCPA 745, 89 F.2d 509, 135 USPQ 319.

B. And In re Lockhart, 90 USPQ 214 (CCPA 1951) the court said:

After a careful examination of the record, we do not find ourselves in agreement with appellant's argument. Although it is true that invention may be present under some circumstances in making integral that which was separate before, we do not feel that such is the case here. Improved results only will not take the case out of the general rule. There is also a requirement that the unification or integration involve more than mere mechanical skill. In re Murray, 19 CCPA 739, 53 F.2d 541, 11 USPQ 155; In re Zabel et al., 38 CCPA 832, 186 F.2d 735, 88 USPQ 367. In this case, all of the essential elements of the appealed claims except integration of parts, are found in the references. It appears to us that the unity or diversity of parts would depend more upon the choice of the manufacturer, and the convenience and availability of the machines and tools necessary to construct the syringe, than on any inventive concept.

C. In Howard v. Detroit Stove Works, 150 US 164 (CCPA 1893) the court said: "As to the 3rd patent, it is void because the claims in it were clearly anticipated, and because it involves no invention to cast in one piece an article which has formerly been

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cast in two pieces and put together, nor to make the shape of the grate correspond with that of the firepot".

D. In re Scheckler, 168 USPO 716 (CCPA 1971) the court said:

It is not necessary that a reference actually suggest changes or possible improvements which applicants made.

E. In re Bozek, 163 USPO 545 (CCPA 1969) the court said:

"Having established that this knowledge was in the art, the examiner could then properly rely, as put forth by the solicitor, on a conclusion of obviousness from common knowledge and common sense of the person of ordinary skill in the art without any specific hint or suggestion in a particular reference.'"

F. In re Gershon, Goldberg, and Neiditch, 152 USPO 602 (CCPA 1967) the court said:

"Although references do not disclose or suggest the existence of applicants' problem or its cause, claims are rejected under 35 U.S.C. 103 since references suggest a solution to problem; it is sufficient that references suggest doing what applicants did, although they do not teach or suggest exactly why this should be done, other than to obtain the expected superior beneficial results."

G. In re Beattie, 24 USPO2d 1040 (CA FC 1992) the court said:

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"Board of Patent Appeals and Interferences correctly held that it would be obvious to one having ordinary skill in art to combine prior art references in order to arrive at claimed marking system for reading and playing music on keyboard or stringed instruments, despite absence of single express teaching of marking system which combines two musical theories of prior art references, since law of obviousness does not require that references be combined for reasons contemplated by inventor, but only looks to whether some motivation or suggestion to combine references is provided by prior art taken as whole".

I. Merck & Co. Inc. v. Biocraft Laboratories Inc., 10 USPQ2d 1843 (CA FC 1989) the court's opinion:

A reference may be relied upon for all that it would have reasonably suggested to one having ordinary skill in the art, including non-preferred embodiments.

J. In re Heck, 216 USPO 1038 (CA FC 1983) the court 's opinion:

Similarly relative terms in claims are given broadest reasonable interpretation during patent application's prosecution.

K. In re Merck & Co., Inc., 231 USPO 375 (CA FC 1986) the court said: "Non-obviousness cannot be established by attacking references individually where the rejection is based upon the teachings of a combination of references."

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O. In re Oetiker , 24 USP02d 1443, 1445 (Fed. Cir. 1992) the court's opinion: A prior art reference is analogous if the reference is in the field of applicants' endeavor or, if not, the reference is reasonably pertinent to the particular problem with which the inventor was concerned.

P. Lamont v. Berguer , 7 USP02d 1580 (BdPatApp&Int 1988) the court said: "Section 103 requires us to presume that the artisan has full knowledge of the prior art in his field of endeavor and the ability to select and utilize knowledge from analogous arts".

27. Any inquiry concerning this communication or earlier communications from the examiner should be directed to examiner Cuong H. Nguyen, whose telephone number is (703)305-4553. The examiner can normally be reached on Monday-Friday from 7:00 AM-3:30 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Wynn Coggins, can be reached on (703)308-1344.

Any response to this action should be mailed to:

Amendments
Commissioner of Patents and Trademarks
c/o Technology Center 2100
Washington, D.C. 20231

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or faxed to: (703) 308-9051, (for formal communications
intended for entry)

Hand-delivered responses should be brought to Crystal Park II, 2121 Crystal
Drive, Arlington, VA., Sixth Floor (Receptionist).

Any inquiry of a general nature or relating to the status of
this application should be directed to the Group receptionist
whose telephone number is (703) 305-3900.

Cuonghnguyen

Cuong H. Nguyen
Patent Examiner
July 13, 2001